tially advisory in character. Knowing the equipment of a particular Chief Secretary, more weight would undoubtedly be given to the Chief Secretary who has special advantages or acquired special experience. But, nevertheless, much of the discredit which goes to the Chief Secretary is not often his. And, on the other hand, much of the credit which is claimed by the Head of the Administration or which people, for strategic or other reason, ascribe to him is not so much due to the Head of the Administration as to that team with which he works but for whose loyalty, co-operation, ungrudging support, pertinacity and unremitting patience, the Head of the Administration could not have acquired that credit. That is why I said yesterday in the course of my remarks that it is only those people who have got the faculty of saying "no" as also of saying "yes" and have developed that faculty adequately and porperly, who could here fulfil the position. I may say of Mr. Nilakanta Aiyar that no Dewan could hardly wish for a better Chief Secretary. Considering that for over 20 years I have worked with all sorts of Secretaries all over India, I trust honourable members will note that this is high praise. I do not wish to say more. I must add that he has displayed in the Legislature an adaptability to the novel environment of the Legislature, a habitual courtesy and a directness of expression and a facility for giving the soft answer that would turn away wrath which is not often associated with the permanent service. He has done fine work. But I expect finer work of him in future. In the industrialisation and agricultural rehabilitation of this country, there are many directions in which his advice and active co-operation would be of great value. In the hope that such co-operation will be available, in the hope that he will be always willing to help the country, and our Sovereign, I associate myself with the remarks that have fallen from the various honourable members.

The motion was put and carried *nem con.*

LEGISLATIVE BUSINESS.

THE TRAVANCORE SPECIAL MARRIAGE AND SUCCESSION BILL.

Mr. Kottur Kunjukrishna Pillai: Sir, I move that the Travancore Special Marriage and Succession Bill as passed by the Assembly be taken into consideration.

Mr. M. Govindan: I second it.

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Mr. C. N. Tuppan Namboodiri : ഈ സ്പെഷ്യൽ മാരേജ് ബിൽ അവതരിപ്പിച്ചതിൽ വ ളരെഗതികേ ഉണ്ടെന്നു നോട്ടീസ് കൊണ്ടു കാണുന്നു. അതിൽ നാലാമത്തെ ളരെഗതി ആദ്യമായെടുത്തു് അതു പാസാക്കുകയാണെങ്കിൽ മറ്റുള്ള ളരെഗതികളുടെ ആവശ്യമേ ഇല്ലെന്നു കാണാവുന്നതാണു്. അതിനാൽ അതു പാസാക്കി. ... ...

President : I am fully aware of it. I have been wondering how marriage can be solemnised without women. I dare say I shall get some explanation about it.

The question before the House is that The Travancore Special Marriage and Succession Bill be taken into consideration.

Mr. James Fletcher : I oppose the introduction of the Bill in the House.

Mr. Kottur Kunjukrishna Pillai : There is no motion for the introduction of the Bill.

Mr. James Fletcher : I mean the consideration of the Bill. This bill makes the solemnisation of marriage a mere contract. That is a sacrament. So far as many of the communities in Travancore are concerned, marriage is a sacrament. Christians believe marriage as sacrament. Any solemnisation of marriage outside the church is considered to be something which the church or the Christians cannot accept. The person who conducts such a marriage is removed from the society or the church to which he belongs. Therefore, the bill under consideration of this House for making marriage into a contract will be very injurious to that community. Similarly, I submit that the Muslims also do not believe in marriages between Muslims and communities other than Jews, Christians and Muslims, so much so that it is a law which will affect the principles embodied in the Koran, the sacred book of the Muslims, and it brings a conflict between religion and society. I may also state that the law that is prevailing in British India, that is, Special Marriage Act, does not include the Christians and Muslims within its ambit. To the Brahmins also marriage is a sacrament. Marriage being a sacrament to all these communities, it would be unwise to allow this bill to come into force because it makes the marriage a contract. I may submit that there are provisions in the bill for free divorce also. That is also opposed to the principles of the Christian Law. So, I respectfully submit that I oppose the consideration of the bill.

Mr. T. Krishna Pillai : Sir, I wish to place a matter for the kind consideration of the Chair before proceeding further with the bill.

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Of late, Sir, it has become a common practice to interdict the members occupying treasury benches from participating in the debate and also from freely exercising their freedom of conscience in the matter of voting where a legislative measure originates from this side of the House.

Mr. Puthupalli S. Krishna Pillai (*Legal Remembrancer to Government*): Whenever we want to express our opinion we do that and in ordinary legislative matters. Official members do not exercise their votes. But as member in charge of the legal matters I can exercise my privilege to... ...

President: The position is perfectly clear. The standpoint of Government in all matters of social legislation has been that Government officers should not vote and the result of the discussion on any such legislative measure is left to the free vote of the rest of the House. That has been the rule generally followed in British India and I think it is a safe and sound procedure. At the same time, it cannot be forgotten that the Legal Remembrancer for instance, occupies a special position in regard to such matter. It may be his duty, and very often it is his right, to point out legal pitfalls or difficulties. Supposing, for instance, he has to point out that some criticism has proceeded upon the misunderstanding of the scope of an enactment, then he is within his jurisdiction and to that extent the Legal Remembrancer may function. Similarly supposing it is a matter having advertence to the activities of the Police, or some other department, the head of the particular department may elucidate the matter in connection with his department.

Sahib Bahadur T. Mahomed Ismail (*Nominated*): Sir, at this stage when this Bill is taken into consideration by this House I oppose the Bill as a whole, especially because the provisions of this Bill are against the law of Islam. As I have already stated on the floor of this House, that in matters of social legislation, no law should be made statutory against the personal law of any community. If any community or communities want such a piece of legislation let them have it. I have already submitted an amendment to the provisions of this Bill in which I have stated that the Muslim community should be exempted from the operation of the provision of this Bill. When that amendment is taken up for consideration I shall speak more fully on this matter.

Mr. K. K. Kuruvilla: Sir, I have two important points to stress in this connection. One is that I accept the view that marriage is a sacrament. Almost every community has made rules on the marriage based on the principle that it is a sacrament. But there is nothing to prevent a man or woman of one community from running away with a man or woman belonging to another

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[Mr. K. K. Kuruvilla.]

community. There is nothing in the Christian community, or in any other community to prevent such an act. This man or woman can claim also his or her respective civil rights. I do not on that basis object to this bill. I have read in papers of the sort of marriages prevalent in America or Russia. Even there, there have been some rules and regulations made to govern such marriages. Though divorce is easy, there are rules and regulations formulated to guide those divorces. Here it is a matter of mutual consent or a formal order or a formal decision. Sir, the husband and wife quarrel for an hour or two. And they may immediately come to a compromise by the mediation of someone else. The cause for their quarrel is found to be invariably silly and trifling. The man may have invited another woman into his house or the woman may have done so with regard to another man. Some time ago we had the privilege of settling a dispute between a husband and wife. They lived separate for about 7 months and the children were taken by the husband to live with him. But now, through mutual consultation and mutual arrangement, they are living together in peace and in comfort. I am strongly of the opinion that no provision should be made to make divorce easy. If such provisions are made in this bill I think that it would be very difficult for us to support the bill.

Mr. K. M. Kesavan: Sir, I for myself cannot understand why the Muslim, the Christian, and the Brahmin communities should claim exemption so far as this bill is concerned. This bill does not provide for anything compulsory. It is only a permissive measure. If, for instance, a Muslim mates with a non-Muslim woman, then it is a matter of much heart-burning to the members of the community to which the woman belongs. May I ask the honourable member Mr. Ismail, whether.. ....

Sahib Bahadur T. Mahomed Ismail: Sir, on a point of order. Is the honourable member entitled to ask questions at this stage?

President: The principle and the general provisions of the bill may be discussed. So, in order to discuss that he is entitled to put questions.

Mr. K. M. Kesavan: Sir, I do not propose to enter into the details of the bill now. But with regard to the general provisions of the bill, I may say that the bill is intended to make concubinage impossible and to provide for the marriage of those men and women who go out of their community and contract love and live in concubinage. Such persons should be allowed to enter into matrimonial alliances so that their children may be legitimatised. I think this is

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a position which the Muslims and non-Muslims and, for that matter, any community should take up and support rather than oppose. I therefore support the motion that the bill might be taken up for consideration.

Mr. Kottur Kunjukrishna Pillai: We are only at the stage of opposition to the motion for taking the bill into consideration. So far, the opposition is based on amendments given notice of. Though the questions which have been raised can be decided at a stage when those amendments are taken, my friend Mr. Kuruvilla says that in a body like this the bill cannot be amended. I fail to see why it cannot be amended. Amendments can be discussed and amendments can be accepted and further the bill can be revised.

Sir, with regard to the questions raised regarding the object of the bill in providing for marriages, having the effect of a civil contract, I think that it has to be admitted that, under this Act, marriage is no sacrament. It is for those individuals who do not care very much whether marriage is a sacrament or not and who go outside all restrictions of marriages, that the bill provides. My honourable friend Mr. Kuruvilla ought to know, however much he or Mr. Fletcher can talk of the sanctity of marriage rules, that the poor children begotten by such unions which are not recognised now and which are actually banned, are not responsible for the infringement of laws or customs of their parents and they should not suffer on any account. If such unions are not made legal I am afraid that the issue of such unions would have to carry the stigma of bastardliness throughout their lives. That is the only question we have to consider. Amendments can be considered at a later stage. It is to be considered now whether we are agreeing to the cardinal principles of the bill, that is, to provide for legitimising the children who are not responsible for being brought into existence in the world.

Mr. T. Krishna Pillai: May I know, if the father and mother belong to two different communities, to which community the children would belong?

Mr. Kottur Kunjukrishna Pillai: They will belong to the community of the mother. Under these circumstances, Sir, I think that all those people who have opposed the consideration of the bill would kindly wait till the particular motions for amendments are brought forward for discussion in the House.

Mr. K. K. Kuruvilla: Will there not be the contingency of sending the bill again to the other House saying that it will take much time in considering the amendments?

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Mr. Kottur Kunjukrishna Pillai: There is no very great urgency, so far as this measure is concerned. If any suitable amendment is brought forward, it can be accepted by this House. There is provision for this bill being again referred to the other House. Meantime, there is nothing to prevent the House from adopting any amendment. Sir, under these circumstances, I request the honourable members to withdraw the wholesale opposition to the consideration of the bill. Let us go on with the consideration of the merits of the provisions.

Mr. Kochikal P. Balakrishnan Tampi: Sir, I may be permitted to suggest that no member should be allowed to speak more than 5 minutes on this motion.

President: Unfortunately, under our rules, no time limit is fixed.

Mr. Kochikal P. Balakrishnan Tampi: But if the House agrees to it ?

President: Then certainly it may be observed.

Mr. C. N. Tuppan Namboodiri: നംപൂതിരിസമുദായക്കാർക്ക് ഭാഗവ്യവസ്ഥയില്ലാത്തതുകൊണ്ട്, ഈ നിയമം പാസാകുന്നപക്ഷം ഇതരസമുദായങ്ങളിൽപെട്ട ഒരു സ്ത്രീയെ കല്യാണം കഴിക്കുന്ന ഒരു നംപൂരി, അയാൾ കാരണവനായി വരുന്ന ഘട്ടത്തിൽ കുടുംബസ്വത്തിന്മേൽ അയാൾക്കുള്ള അവകാശത്തിന്റെ ഒരംശംകൂടി ആ സ്ത്രീക്ക് അവകാശപ്പെട്ടവാൻ ന്യായമില്ലയോ?

Mr. Kottur Kunjukrishna Pillai: ഈ ചോദ്യം എന്തുകൊണ്ടുണ്ടായി എന്നു എനിക്കു മനസ്സിലാക്കുവാൻ കഴിയും. പാരമ്പര്യമായി അവകാശപ്പെടുന്ന സ്വത്തിന്മേൽ ഈ നിയമംമൂലം എത്രത്തോളം ഭേദഗതി വരുമെന്നുള്ളതിനെപ്പറ്റി ന്യായമായ ആശങ്കക്ക് വകയുണ്ട്. മെമ്പർ സംശയിക്കുന്ന ന്യൂനതകൾ നീക്കംചെയ്യുന്നതിനുള്ള ഒരു ഭേദഗതി മി. ഗോദവർമ്മരാജാ അവതരിപ്പിക്കുന്നുണ്ട്. ആ സമയത്തു അതിനെപ്പറ്റി കൂടുതൽ ചിന്തിക്കാവുന്നതാണ്. എന്റെ അഭിപ്രായവും ഞാൻ അപ്പോൾ പറഞ്ഞുകൊള്ളാം.

President: The question before the House is that this Bill be taken into consideration.

The motion was put to vote and carried.

Mr. James Fletcher: I demand a poll.

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A poll was accordingly taken and the house divided as follows :—

AYES—12.

1. Mr. M. Govindan
2. Mr. V. Sankara Menon
3. Mr. T. K. Kitten
4. Sry. Renganayaki Ammal
5. Mr. Kalloor Narayana Pillai
6. Mr. A. Easwara Pillai
7. Mr. K. M. Kesavan
8. Mr. Kottur Kunjukrishna Pillai
9. Mr. T. W. U. Park
10. Mr. Kochikal P. Balakrishnan Tampi
11. Mr. T. Krishna Pillai
12. Mr. P. I. Simon

NOES—9.

1. Mr. James Fletcher
2. Sahib Bahadur T. Mahomed Ismail
3. Mr. Thomas Chandy Mukkadan
4. Mrs. Abernam Gnanasikhamony
5. Miss Thressia Kora
6. Sahib Bahadur M. Sultan Muhiadheen
7. Sahib Bahadur Hajee Hassan Yacoob Sait
8. Sahib Bahadur Abdul Tayeb Shaikh Kaderbhoy
9. Mr. E. K. Kuriype

NEUTRALS—15.

1. Mr. R. Rama Varier
2. Mr. Puthupalli S. Krishna Pillai
3. Mr. S. Ramakrishna Aiyar
4. Mr. I. C. Chacko
5. Mr. K. P. Padmanabha Menon
6. Mr. E. G. Salter
7. Khan Bahadur Rajyasevapraveena G. S. Abdul Karim Sahib Suhrawardy
8. Mr. C. S. Lekshmanan Pillai
9. Mr. P. G. Narayanan Unnithan
10. Mr. G. Narayana Aiyar
11. Mr. K. K. Kuruvilla
12. Mr. M. K. Anantasiva Aiyar
13. Mr. P. R. Goda Varma Raja
14. Mr. C. N. Tuppan Namboodiri
15. Mr. N. Krishna Aiyar

The motion was declared carried, 12 voting *for*, 9 voting *against*, and 15 remaining *neutral*.

Clause 1.

The question that clause 1 do stand part of the Bill was put and carried.

Clause 1 was added to the Bill.

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Clause 2.

Sahib Bahadur T. Mahomed Ismail: Sir, I beg to move the following amendment to Clause 2 :—

> "Add the following as sub-clause (2) of Clause 2, numbering the present Clause 2 as sub-clause (1) of Clause 2 :
>
> (2) "Notwithstanding anything contained in sub-clause (1) of Clause 2, the provisions of this Act shall not be applied to the members of the Muslim Community".

Sir, it is with a full sense of responsibility to my community and to the country that I have tabled this amendment. I am actuated by the best of motives by a sincere desire to preserve the integrity of my community and the glory and greatness of my country. My motive is no less sincere than the motive of the sponsors of this movement. The only difference is that we stand and look at things from different points of view. Of course, my view is that this law, if allowed, will cause the disintegration of the community. I need not say anything about the motive of the sponsors of the Bill. It must be said that it is for their good. My amendment means that from the operation of this Bill, the Muslim community should be exempted since the Muslims believe that the provisions of this Act are an abuse of the fundamental principles of Islam. Looked at from the standpoint of the Shariat, *i. e.* the law of Islam, this Act is illegal, immoral, unjust, uncalled for and unwanted.

Before I proceed to make an analysis of the Islamic law on the point and the Act that is presented before us, I must speak a word about the oft-quoted phrase that this Bill is only a permissive law. It is not possible for me to see how a particular law is less compulsory or more permissive than any other law. Any law that we may make is permissive in the sense that such and such acts being done such and such consequences will follow. If you steal, for instance, you will be punished. If a man commits murder, he will be punished. There is no compulsion for a man to murder another. In that sense, it can he said that all the laws—civil, criminal and revenue—are permissive.

Mr. Puthupalli S. Krishna Pillai: Is the penal law a permissive law in the sense in which the member understands that expression ? Does it permit an offence to be committed ?

Sahib Bahadur T. Mahomed Ismail: It does not. But what I mean to say is only that every law enacts that if such and such an act is committed, such and such consequences will follow. In this Act, it does not say: "You must marry". It does not require a man to contract a marriage according to the

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provisions of this law, but if one does he must take the consequences prescribed by this law. The real question is not whether it is obligatory or optional. We are more concerned with the effect that it has on the system of law which we were following and which has stood the test of more than 13 centuries.

Now I will explain what is meant by marriage according to the Islamic principles. Of course, I have taken down these notes from the translation of the Holy Koran and Ameer Ali's "Muhammadan Law" and my friends will excuse me for referring to the notes. It is true that marriage, under Mohamedan Law, is defined as a contract. Ameer Ali says that "it is a contract when regarded as a social institution". It is a contract recognised and enforced by religion. There are conditions enjoined for the validity of this contract. The law does not empower its followers to conclude a contract of marriage on their own likes and dislikes as some honourable members seem to think. In short, the conditions are religious and the marriage is a religious institution. Viewed from this standpoint a Muslim marriage is more sacred than all the sacraments put together.

Sir, the Holy Koran states thus on this point:

"Marriage is an institution ordained for the protection of society, it is instituted by Divine Command". I would appeal to the honourable members to mark the words "ordained" and "Divine Command". It is a command of God. Ameer Ali says "Marriage when treated as a contract is a permanent relationship based on mutual consent on the part of a man and a woman between whom there is no bar to a lawful union".

Mr. K. M. Kesavan: May I ask the honourable member whether the relationship can be dissolved by pronouncing the word '*Talak*' thrice?

Sahib Bahadur T. Mahomed Ismail: Not only by repeating that word; but there are different forms of divorce allowed by Islam.

Mr. K. M. Kesavan: May I know whether this form of divorce exists?

Sahib Bahadur T. Mahomed Ismail: Yes. It exists under certain conditions and the conditions are prescribed in the Koran and if we follow those conditions, we can legitimately effect a divorce.

Then the Holy Koran lays down the conditions for lawful union. These conditions are two in number, one detailing those prohibited by relationship, consanguinity, affinity, fosterage etc., and the other is prohibition of marriage between followers of

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[Sahib Bahadur T. Mahomed Ismail]

different religions. Mark the words "prohibition by religion". The Koran declares: "Marry not a woman of Polytheists", "Such women as are belonging to the Scriptural Sects are lawful to Muslims". Commenting on this Ameer Ali says "From these and similar directions Islam recognises as legal and valid a marriage contracted between a Muslim on one side and a Hebrew or a Christian woman on the other. It prohibits a Muslim from marrying an idolatress or one who worships the stars or any kind of fetish whatsoever".

Mr. M. K. Ananthasiva Aiyar: May I know whether Islam allows a marriage contract between a Mussalman on the one side and a Hebrew or Christian woman on the other, though it prohibits a muslim woman from marrying a man from another community?

Sahib Bahadur T. Mahomed Ismail: I am coming to that. A Muslim woman is prohibited to marry a non-Muslim, not even a *kithabi*, that is, a Jew or a Christian. It is on this point that many of my friends may accuse me and say "you want to marry our ladies. You will not give your ladies in marriage to us". They are perfectly right in asking that question, Sir. The Holy Koran forbids a *Muslima*, that is, a Muslim woman, from marrying a non-Muslim. If she marries a non-Muslim she ceases to be a Muslim.

Mr. T. Krishna Pillai: May I know from my honourable friend, when he follows the prohibition and principles laid down by the Koran, how this enactment will affect him?

Sahib Bahadur T. Mahomed Ismail: I have already stated in my introductory remarks that I am going to compare the provisions of the Islamic law with the law that is before us. When I take up that question it will be seen that the provisions of this Bill are nothing but immoral provisions.

Mr. P. I. Simon (*Municipal Councils*): May I know whether the laws of the Koran are not permissive in their nature?

Sahib Bahadur T. Mahomed Ismail: The laws of the Koran permit a Mussalman to marry a Christian or a Jewish lady, not an idol worshipper. In that sense it is permissive. I am at the question why Islam prohibits a Muslim woman from marrying a non-Muslim.

President: Order, Order. The House will now adjourn and meet again at 2 o'clock.

The House adjourned for lunch at 1 P. M. and re-assembled at 2 P. M.

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NEW MEMBER.

Mr. D. Gainneos took the oath and signed the rolls.

THE TRAVANCORE SPECIAL MARRIAGE AND SUCCESSION BILL—(*contd.*)

Mr. K. K. Kuruvilla: Sir, may I request you that, in view of the fact that the Travancore Special Marriage and Succession Bill may take the whole of this afternoon and whereas my bill will not take even five minutes to be disposed of, I may be permitted to kindly introduce it which is purely a non-controversial matter. After that the discussion of the other Bill could be proceeded with.

President: I am entirely in the hands of the House on this issue.

Mr. Kochikal P. Balakrishnan Tampi: I have no objection to accede to Mr. Kuruvilla's request.

Mr. M. Govindan: Sir, I object to the request being granted.

Mr. Kottur Kunjukrishna Pillai: It will be against procedure if we take up the other bill at this stage.

Mr. K. K. Kuruvilla: I only put the matter to the Chair as a piece of request and if the House is not agreeable, I do not want to go counter.

President: Unless the House is fairly unanimous, I cannot give permission.

Sahib Bahadur T. Mahomed Ismail: Sir, I was speaking about the prohibition of Muslim women.

President: Order, order. I would just point out one matter. Strictly speaking I should have called upon Miss Korah to move her amendment first, because, if, as a matter of fact, no woman is affected by this bill, such questions will not arise. Therefore, I will now call upon Miss Korah to move her amendment.

Mr. Kottur Kunjukrishna Pillai: Sir, in regard to that amendment, I rise to a point of order.

President: Let us first see whether the honourable member is moving it.

Miss Thressia Korah (*Todupuzha* cum *Minachil*): Sir, I beg to move the following amendment —

Add the following as sub-clause (2) of Clause 2 numbering the present Clause 2 as sub-clause (1) of Clause 2:

> "Notwithstanding anything contained in sub-clause (1) of Clause 2, the provisions of this Act shall not be applied to the women of Travancore."

This amendment has to be explained.

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Mr. Kottur Kunjukrishna Pillai: Under the Standing Orders, [Section 25 (5)] my suggestion is that this amendment is frivolous and vulgar to a certain extent.

President: No, no, I have been thinking over it myself. Apparently the idea is that the women of Travancore should not be affected.

Miss Thressia Korah: Yes, Sir.

President: But, you have no extra-territorial legislative powers. Please explain.

Miss Thressia Korah: I shall explain, Sir. The main idea is to request all women to claim exemption from this mischievous Bill, particularly exemption for Christian women. That is what I meant by this amendment.

Sir, I oppose the Bill in the name of the womanhood of Travancore in general and of the Syrian Catholic women in particular. After this Bill has been passed by the Assembly, I have consulted the women of different communities who are unanimous in their condemnation of the Bill for the following reasons. Firstly, we all know that marriage is a sacred institution and it cannot be tempered so light-heartedly. Those who believe in religion cannot agree to this Bill. Secondly, true marriage happiness cannot be achieved by this Bill. Almost all those who do register marriage curse themselves afterwards if not immediately Moreover, it is sure that this Bill will lead to all sorts of discord among families and other unforeseen evil consequences. Again, discord among families may even result in communal ill-feelings and social unrest. Above all, it is the sacred duty of women, who are the main support of families, communities and societies, to keep up the morality of the nation.

The present Bill gives a loophole to the men and women to fall away from the high pedestal of morality. At the same time, it is opposed to religion. With these words, I protest against the present bill.

Mr. Kochikal P. Balakrishnan Tampi: May I know from the member the physiological and psychological aspect of marriage of Travancore men without Travancore women?

Mr. James Fletcher: Sir, I second the amendment. From the explanation of the mover, it could be understood that the honourable member particularly refers to the women of Travancore.

Mr. Kottur Kunjukrishna Pillai: No, Sir.

Mr. James Fletcher: She has referred to the women of Travancore as a whole and in the last portion of her explanation, she refers to the Christian women of Travancore. Travancore is very happy in having a quiet time unlike what is obtaining in European countries.

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Mr. T. W. U. Park (*Travancore Planters*) : I question the latter sentiment of the honourable member.

Mr. James Fletcher : I shall make my point clearer. Travancore is mostly an agricultural country. We are still living in the old ways, not having much of industries and manufactures.

Mr P. I. Simon : Then, may I know, what about the indutrial policy now pursued in the State ?

Mr. James Fletcher : The industrial policy is still in an infant stage. Further, in Travancore, the different communities are living side by side and each has got a peculiar mode of life in their domestic affairs. In other words, my point is that a Muslim has got his own culture. His method of living is different from the Christian way of living. The Hindu method of living is also different. It is difficult for all people, Hindu, Muslim and Christian to live together in one house, because each community is having different food. For instance, take the Hindu community. They may not care for meat-while a young Muslim may desire it. It is possible for these communities to have marital relationship amongst them under the different conditions of food and living prevailing amongst them. Unless the different communities have everything in common between them, there is no use of having real marital relationship.

Mr. M. Govindan : Is it not a case of individuals marrying individuals ? There is no question of marriage between community and community.

Mr. James Fletcher : Each community is accustomed to a certain method of living. A young Muslim trained in modern culture and method of living does not find himself in a level with the civilisation of a Hindu woman. Assume one Muslim male and a Hindu female love one another ; they find they could effect a civil marriage to solemnise it. When they come to live together, they find their customs different. Consequently they find they cannot live happily together, as man and wife.

President : Do not they consider food and other customs before their marriage ?

Mr. James Fletcher : They think of marriage only. The parties are a young man about 21 years of age and a young woman about 21 years of age. They do not think of the food and all that. In European countries men and women are accustomed to live together freely for a long period of time.

Mr. T. W. U. Park : That is not correct.

Mr. James Fletcher : I am referring to the individuals. Before marriage, a man and his woman go for a courting season.

Mr. Kottur Kunjukrishna Pillai : May I know whether they follow the Christian law ?

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Mr. James Fletcher: I am only referring to the sort of life the people are leading in Europe. Before marriage, a man and a woman are allowed to move about freely, so much so, the man knows the woman fully well and *vice versa*. Their temperaments are also known in the same manner. Thereafter marriage takes place. On the other hand, in India, that sort of life is more or less prohibited. That kind of life is not liked by anybody. Especially when a young man and woman are not allowed to come together and move about freely, difficulty arises on the question of living. They do not know what kind of life one is accustomed to. So, in the Indian system of living, if different people belonging to different communities are allowed to have solemnisation of marriage under this bill, there will arise difficulties and dangers.

Mr. P. I. Simon: May I know whether a Catholic can marry a Protestant?

Mr. James Fletcher: With the permission of the Church and higher clerical authorities it can be done. For example, if a Catholic young man wants to marry a Protestant girl, that question would ordinarily be submitted to the clergy. The priest will ask the girl to become a Catholic first. If the girl is not prepared to do so and if they desire to remain as they are permission may or may not be granted. In India, what is ordinarily done is this. Marriages are arranged by the parents. Before that is done, the families of both the bride and bride-groom know one another. Thus they come to know full well the life they are leading.

Mr. Kochikal P. Balakrishnan Tampi: We know all that. Has the member got anything more to say?

Mr. James Fletcher: I have to explain to the House why I oppose this piece of legislation. Our conditions are entirely different from the conditions where this sort of marriage could be legalised.

President: I did not want to interrupt the honourable mover of this amendment. But in the case of a trained lawyer like Mr. Fletcher, I think I can get elucidation on one or two points. Assuming that this amendment is moved, two questions legally arise. Firstly, it must be borne in mind that ours is a legislature of limited jurisdiction. In other words we do not exercise extra-territorial legislative powers. We cannot therefore legislate for people living outside Travancore; and therefore the question arises as to what this amendment or this Bill applies. Is it an attempt to exercise extra territorial powers? Secondly, if it is a direct negative as the honourable member's remarks enable me to conclude—of the proposition passed by this honourable House that the Bill be taken into consideration, then the further question arises whether it is in order

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after the honourable House has deliberated and come to the conclusion that the Bill be taken into consideration that an amendment which, though not in form, in substance is the negative of that resolution passed by the honourable House, can be discussed.

Mr. Puthupalli S. Krishna Pillai: Sir, under Standing Order 25 (2) an amendment may not be moved which has merely the effect of a negative vote, (Page 24 paragraph 68). That has also been the uniform ruling given by the Chair on various other occasions. They are referred to and quoted at page 70 of the Selections from the Rulings of the Chair. In this particular case, Sir, it is impossible to conceive how there can be a marriage without a female being one of the parties to the transaction.

President: It is a Travancore female.

Mr. Puthupalli S. Krishna Pillai: You have already stated, Sir, that this Legislature has no power to legislate for women outside Travancore. That is clear. That is one of the elementary rules known to all the honourable members of this House. If that is so, it means that in spite of the Special Marriage Act there will be no female who will be affected by this measure. Can we conceive of a marriage where a female is not one of the parties? It appears to me that the honourable member's impression is that marriages in this country can be celebrated between males. That appears to be the implication contained in this amendment. The other Chamber, Sir, said that a marriage may be celebrated. The word 'marriage' itself implies a male and a female. I do not think, Sir, that marriage without a female is known to any system or to any country.

President: A Roman emperor is supposed to have married a horse.

Mr. Puthupally S. Krishna Pillai: But it is also heard Sir, that he was mad or insane.

President: Some people think so.

Mr. Puthupally S. Krishna Pillai: But it should not be supposed, Sir, that we are in the same position as that Roman emperor. Under this rule, Sir, it is clear that this amendment completely negatives the Bill itself. We have voted on the motion that the Bill be taken into consideration. Therefore, generally, the House has agreed that the principle of the Bill may be adopted. But the honourable member now moves that it shall not be applicable to females. If it will not be applicable to females I do not see how we can proceed with the Bill itself.

President: Order, order. Mr. Fletcher will deal with the matter.

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Mr. James Fletcher : What section 2 of the Bill says is that it shall apply to all persons domiciled in Travancore and to such persons not so domiciled as have or shall have marital relations in the form prescribed under this Act with persons domiciled in Travancore. So the female may be a British Indian person and the law affects a male of Travancore who may have marital relationship with a British Indian female and such persons are affected by this Bill. So, it cannot be said that this amendment is entirely contradictory with reference to the marriage relationship. I understand that what the mover wants is that it may affect men of Travancore who have got marital relationship with women outside Travancore.

Mr. Puthupally S. Krishna Pillai: That is to say, the amendment wants the men of Travancore to go and fetch females from outside Travancore, get married here and then be subject to this law.

Mr. James Fletcher: Yes.

Mr. Puthupally S. Krishna Pillai ; That is, we are now permitting the males of Travancore to make inroads into foreign territories, bring females here and enter into marital relationship with them so as to affect their status, rights and privileges.

Mr. James Fletcher: Sir, it is not a question of permitting inroads. It is only a question of choosing.

President: A more important point is the question of this amendent negativing the resolution already arrived at by the honourable House.

Mr. James Fletcher: I would rather put it this way, Sir, As the mover herself said, though it may be a tall order, saying all women, she particularly refers to the Christian women.

President: I think I have enough material for me to give a ruling. As the amendment is worded, it does not apply to Christian women or to any particular category of women. It applies to women generally and therefore I can only deal with it as it is worded. And on that basis, without going into the somewhat complicated problem of a marriage in which one sex alone will play a part, I propose to base my ruling on the simple proposition that in reality this amendment would negative the resolution of the honourable House when it voted in favour of taking the Bill into consideration. I therefore rule the amendment out of order.

Sahib Bahadur T. Mahomed Ismail. Sir, I have been talking about the commandments contained in the Holy Koran about the institution of marriage ; and elaborating on this point I left the Hall at a time when I was talking about the injunctions preventing Muslim women from marrying non-Muslims. There I was.

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also about to speak of a question always addressed to the Muslims why they are prepared to marry from other communities while they are not prepared to allow their women to marry non-Muslims. The reason for that is very clear.

Mr. M. Govindan: May I know, Sir, whether the marriage of Muslims with non-Muslims is allowed under the law?

Sahib Bahadur T. Mahomed Ismail: Sir, I am sorry that an experienced lawyer as my friend Mr. Govindan who was listening to me for nearly forty minutes could not recollect what I have stated, namely that a Muslim is allowed to marry women from two non-Muslim communities according to the injunctions of the Holy Koran. They are the Jews and the Christians. I have explained this thoroughly and I think that it is due to old age, perhaps, that Mr. Govindan does not remember it.

President: Order, order. It is quite open to honourable members to criticise other honourable members but not on any personal aspect.

Sahib Bahadur T. Mahomed Ismail: Sir, the reason why the Muslim woman is not allowed to marry a non-Muslim is this. Of all the religions I must say that Islam is the most tolerant. If a Muslim marries a Christian lady, he allows her to follow her own religion. He allows her to have freedom of thought. It is stated, that if circumstances and means allow a Christian wife should have the permission to construct even a church for her worship at the expense of the Muslim husband.

Mr. T. Krishna Pillai: May I know from the honourable member whether the Christian woman is not forced to change her religion and become a convert to Islam?

Sahib Bahadur T. Mahomed Ismail: No Sir. There is absolutely no question of inducing the Christian wife to change her religion and become a convert to Islam. On the contrary the Holy Koran says "No compulsion in religion" If a Muslim woman is married to a Christian, then according to the doctrines of Christianity or perhaps of any other religion it is not a valid marriage because a Christian can marry only from his own religion and according to Christian doctrines and so a Muslim woman cannot become the legal wife of the Christian.

Mr. Kottur Kunjukrishna Pillai: May I know whether the honourable member is aware that Christianity enforces monogamy?

Sahib Bahadur T. Mahomed Ismail: Yes, I know that. I will deal with that point later. The Christian cannot have a valid marriage with a Muslim woman according to his religion and because of that we are not prepared to give our women in marriage to a non-Muslim whether Christian or any body else. Even if he

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[Sahib Bahadur T. Mahomed Ismail].

wants to marry a Muslim woman it is not possible for him to have that marriage treated as a valid marriage. It is a nullity in law and the children born of such unions are illegitimate. That is the reason why there is this commandment against the marriage of Muslim women with non-Muslims. Sir, on the chapter on "women", the Holy Koran says "These are the injunctions from God." One who believes in Islam, who believes in the one-ness of God, one who believes in a religion, cannot and *shall not* go against the religious injunctions or commandments of God. This is the law which we have followed so far and which we want to follow hereafter too.

Another point about this marriage is the institution of polygamy. I am not entering into the question of the merits or demerits of the institution of polygamy. Sir, as the Islamic religion shows itself to be a universal religion or claims to be a universal religion and we believe that it is so, it is only fair that a law for the universe must have exceptions. If we strictly follow the law of monogamy it is impossible to marry a second wife ; but a law which should be followed by all the people should have some exceptions under certain circumstances. For instance, in the case of the life-long illness of one's wife if the husband wants to save himself from committing adultery or from committing sins of all sorts, it is only just that he must be permitted to have another wife. On this principle it is that polygamy is allowed under very great restrictions. This Bill, if it becomes law restricts the freedom of the Muslim given by his religion for his moral upliftment.

Mr. V. Sankara Menon : May I know from the honourable member whether a Mahomedan can have only one wife at a time ?

Sahib Bahadur T. Mahomed Ismail : Sir, if we follow the strict injunctions of the Koran, it is not possible for *ordinary* people to marry more than one. The conditions are that you must keep your wives as equals. I ask whether it is possible for any body to consider two people as equals.

Mr. Kochikal P. Balakrishnan Tampi : We do not contemplate any luxury in that matter.

Sahib Bahadur T. Mahomed Ismail : If what I have said is properly understood by Mr. Balakrishnan Tampi he would not have said so. Because in the example I have stated instead of going in for adultery and committing sin if one wife is sick throughout life, a Muslim is permitted to marry again. It is for that reason and not for any luxury, that permission is given.

Mr. K. M. Kesavan : Can he not practice self-restraint ?

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Sahib Bahadur T. Mahomed Ismail: Self-restraint Mr. Kesavan may have. But it is not possible for every one to follow it. As long as human nature is what it is, it is not possible for every body to have self-restraint. Self-restraint should not lead to immorality.

Another religious injunction is about divorce. Divorce is permitted by Islam under certain restrictions. Mr. Kesavan asked me whether divorce is not very easy. According to him marriage is dissolved by saying '*talak*' '*talak*' '*talak*' but if we fully follow the religious injunctions it is not so easy. It is said in the holy Koran that one thing which is detested most by God is divorce. It is stated that the Kingdom of Heaven will be shaken when a divorce is effected. Then why is it allowed? It must be remembered that the law is intended for the whole universe. Therefore if under certain circumstances you want to divorce a wife you must have the legal permission for that. Sir, that is the reason why it is stated that divorce is not a sin. To those who think that even prostitution is not a sin, to them I have no answer. But in Islam prostitution of the wife is a condition for divorce. If a wife is so recalcitrant as not to live with the husband and go with other people is it not only just that permission is given for divorce? Thus divorce is allowed under strict conditions and as exceptions to the general rule.

So far I have been speaking about the law on marriage. Then there is the general commandment of God that "those who disobey the commandments of God shall enter hell" and those who obey will enter the bliss of Heaven". That is the commandment of God. Therefore according to the holy Koran marriage is a commandment, it is a sacred and solemn institution. The Mohamedan Law as administered in British India and other Indian courts is based on the Islamic Law. It is the personal law of the Muslims and it is recognised as the law governing the Muslims.

Mr. V. Sankara Menon: May I know whether the Mahomedan law allows for marriage by mutual love?

Sahib Bahadur T. Mahomed Ismail: Sir, the question arises out of the courting habit of the western people. We Muslims keep our women as women. We do not allow them to wander with other men. Our women have, in the past, fought battles, they carried on trade, and other business but still they are allowed to do so only within the bounds of decency which a woman is expected to possess consistent with womanly qualities. I can take my wife or my sister to enjoy the breeze in the beach but not with Mr. Sankara Menon. That is not the freedom we want.

Mr. Puthupally S. Krishna Pillai: Is it the rule under the Koran that even at the time of marriage the bride should not see the bridegroom?

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Sahib Bahadur T. Mahomed Ismail : No, Sir. On the other hand it is obligatory that the bride-groom should see the bride and talk to her directly. At the time of marriage the man offers "I marry you," and she says "I accept". Perhaps the Legal Remembrancer may have gathered this information from what he has heard ; he might not have actually witnessed a marriage ceremony.

Thus in the matter of social laws such as marriage, dower, divorce etc., they are administered in the case of muslims according to their personal law which I have enumerated. Thus every marriage contrary to the provisions of the Mahomedan law is void and illegal and the children are illegitimate. That is the conclusion I have to draw.

Mr. Krishna Pillai asked me, if these are the conditions and incidence of marriage what is there to lose if this Bill is passed. I shall take up the present Bill and show that it is absurd to the core, from the point of view of Islamic law. Clause 3 says as follows :

> "Subject to the following conditions, marriage may be celebrated under this Act between persons, marriage between whom is not sanctioned or recognised as valid under any law or custom by which such persons are governed."

So this law validates a marriage which is otherwise illegal. Thus clause 3 is a violation of the personal law of the Muslims. Sub-clause (1) of clause 3 reads as follows :—

> "Neither party must at the time of the marriage have a husband or wife living".

That again is a violation of the Muslim law because, as I have already stated, we are under certain circumstances permitted to marry more than one.

Clause 18 reads as follows :—

> "Every person married under this Act who during the life-time of the husband or wife of such person contracts any other marriage, shall be subject to the penalties provided for in Section 497 or Section 498 of the Travancore Penal Code as the case may be for the offence of marrying again during the life time of the husband or wife whatever may be the religion which such person professed at the time of such second marriage."

This is a corollary to clause 3 sub-clause (1). It provides punishment for an act allowed under our religion.

Then again Section 21 provides for divorce through a court. While Islam enjoins divorce under certain unavoidable conditions, perfectly legitimate according to human nature, this law says that if a petition is put in before the District Court a marriage can be dissolved. I beg to submit that we cannot allow this.

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Mr. T. Krishna Pillai: Am I to understand that this measure contemplates a change in the personal law of the Mahomedans relating to marriage?

Sahib Bahadur T. Mahomed Ismail: Yes, if my friend has understood clause 3 well he will find that it is a change in the personal law of the Muslims.

I have so far made it clear that if this Bill is passed it will go against the law of marriage as provided for by Islam.

It is stated in the Bill that it is "the Travancore Special Marriage and Succession Bill". Such a law is not heard of in British India.

Mr. Kottur Kunjukrishna Pillai: May I know whether the learned member is aware that in British India there is a general law of succession.

Sahib Bahadur T. Mahomed Ismail: The law of succession is different for the Muslims from the general law of succession in British India. The Indian succession Act does not apply to Muslims.

Now I will take up the question of Succession and will show how the provisions of this Act are against the personal law of Muslims.

[At this stage the Dewan President left the Chair and Mr. M. Govindan, one of the panel of chairmen, presided.]

The law of inheritance according to Islam is the most democratic law that we can think of. I do not think that any change is called for in it,

Section 34 of this Act says.—

> *"The rules of succession herein contained shall constitute the law of Travancore applicable to all cases of intestate succession to those who marry under this Act and their descendants."*

Mr. T. Krishna Pillai: May I draw the attention of the member to the words "those who marry under this Act"?

Sahib Bahadur T. Mahomed Ismail: The whole difficulty arises because of that wording.

Mr. T. Krishna Pillai: This will not be applicable to those who marry under the personal law.

Sahib Bahadur T. Mahomed Ismail: But this Act allows other forms of marriages to be conducted.

Chairman: I request honourable members to permit Mr. Ismail to go on with his speech, *i. e.*, not to interrupt him.

Mr. Kochikal P. Balakishnan Tampi: But let him consider our nerves, Sir.

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Sahib Bahadur T. Mahomed Ismail : I am also fully conscious of the nerves.

Then, section 28 says.—

> "*A person who marries under this Act shall not, by reasons of such marriage incur forfeiture of rights or property, nor shall it be held in any way to impair or affect any right of inheritance by reason of his or her renouncing, or having been excluded from the communion of any religion or being deprived of caste notwithstanding any law or usage now in force.*"

As I have stated, a Muslim woman ceases to be a Muslim as soon as she marries a non-Muslim. But according to the provisions of this Bill even after such a marriage she can claim inheritance. That is contrary to the provisions that I have stated so far. Again, according to section 30 the distribution of the estate shall be according to certain well defined rules. As I have said, Muslims have got certain well-defined rules of inheritance and they are more just than what is contemplated here. Sub-clause (ii) of section 37 says—"Sons and daughters shall take the property in equal shares" The law as it stands in British India and elsewhere is that in the case of decendants of a Muslim, the son gets double of what the daughter gets ; in the proportion of 2 to the son and 1 to the daughter. If anybody were to ask whether it is not a glaring injustice to give more to the son .....than to the daughter, to him I can show that it is more just than other laws because,.....

Chairman : Nobody can ask that. That is the Mahomedan law. Everybody knows that and that this is a change from that law. So the honourable member need not labour that point.

Sahib Bahadur T. Mahomed Ismail : I am pointing out how this law deviates from the Mahomadan law. Even if that question is not asked it is my duty to explain the point. The law that we follow is better than the one under consideration. Therefore this law is not necessary.

Mr. Kottur Kunjukrishna Pillai : We are all not going to become Mahomedans or adopt the Mahomedan law. So the honourable member need not preach the advantages of the Mahomedan law.

Sahib Bahadur T. Mahomed Ismail.: I am not trying to convert my honourable friend or, for that matter, anybody else to Islam. I am showing how this Bill deviates from the Muhammedan Law and consequently how it adversely affects us.

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As soon as a Muhammedan marries he will have to give a portion of his property to the wife and to that extent his share is reduced and a Muslim woman will get a share from her husband on marriage. Thus the share of the son and the daughter is equalised. This is the justification for the allotment of different shares.

I may say one point more about the law of succession. Section 45 says—

> "Any person who marries under this Act may dispose of by will the whole or any portion of his or her self-acquired or separate property."

This is contrary to the provisions of the Mahomedan Law. Section 104 of Mulla's "Muhammedan law" says—

> "A Mahomedan cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of the legal third cannot take effect, unless the heirs consent thereto after the death of the testator."

In Section 103—

> "A bequest to an heir is not valid unless the other heirs consent to the bequest after the death of the testator"

In Hedaya, a well known authority on Mahomedan Law it is said,

> "Wills are declared to be lawful in the Koran and the traditions."

Commenting on it Baillie says—

> "It will be seen from this and the preceding Section that the power of a Mahomedan to dispose of his property by will is limited in two ways, first, as regards the person to whom the property may be bequeathed, and secondly, as regards the extent to which the property may be bequeathed. The only case in which a testimentary disposition is binding upon the heirs is where the bequest does not exceed the legal third and it is made to a person who is not an heir. But a bequest in excess of the legal third may be validated by the consent of the heirs; similarly a bequest to an heir may be rendered valid by the consent of the other heirs. The reason is that the limits of testamentary power exist solely for the benefit of the heirs."

Here it is stated that he can give not only one-third but the whole. Thus both on the question of marriage and succession, the Bill before us is a transgression upon the Islamic Law or the Personal law of the Musalman.

In the connection, I should like to point out that the declared policy of our illustrious Rulers and His Majesty's Government in British India is to allow the personal law to prevail when that law is in conflict with other laws. That has been the policy followed till now and I can quote instances to show that. The Act in British India on the modal of which this Bill is based exempts the Muslims.

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[Sahib Bahadur T. Mahomed Ismail]

In British India we have the 'Special Marriage Act' while here it is "the Special Marriage and Succession Act."

Mr. Kottur Kunjukrishna Pillai: Does the member know that it is because in British India there is the Indian Succession Act?

Sahib Bahadur T. Mahomed Ismail: Yes, I know that. The British Indian, Act is legalised for persons who profess Hindu, Christian, Buddhist or Jain religions and Muslims are exempted from it and also from the Indian Succession Act.

This Bill is not in accordance with the traditional generosity shown by our illustrious Rulers. So far as personal laws are applicable the General laws do not apply and such communities who follow personal laws are exempted. In the case of the Indian Minority Act of 1875 also Muslims are exempted from certain provisions such as in matters relating to marriage, dower and divorce. The same is the case with the Transfer of Property Act wherein the whole chapter on Gifts does not apply to Muslims. (*At this staye Mr. K. K. Kuruvilla one of the Panal of Chairmen occupied the Chair*). Same is the case with regard to the Law of Pre-emption. Thus, it will be seen that in all matters relating to social legislation, the Muslims were exempted throughout.

I should like to point out the general trend of law in other parts of the world. It may be asked 'What is the peculiarity for this religion so that it may claim exemption from every law? It must be noted and it will be known to the historians that is the principle of democracy, equality and brotherhood preached and practised by Muslims that lead to the codifications of sound laws.

Mr. Kochikal P. Balakrishnan Tampi: Sir, the member is preaching about the basic principles of Islamic religion. So I move that the question be now put.

Mr. Puthupalli S. Krishna Pillai: I beg to point out that the motion for closure is rather too premature. Only one member has spoken on this matter and he himself has not finished. The Chair has got the power to interrupt a member if the Chair thinks that what he says is irrelevant or that he is indulging in repetition, or that he is making an attempt to gain time or that he is wasting time. These are matters for the Chair to consider. The motion made by Mr. Balakrishnan Tampi that the honourable member who is speaking should be guillotined or throttled is against the custom prevailing in the House.

Sahib Bahadur T. Mahomed Ismail: Sir, I have stated this just to show that there are other laws both in British India and elsewhere modelled on the Islamic laws. I request the

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members of this House to give their earnest consideration to what I tell them. If my statements are relevant to the purpose, I hope that the Chair will permit me to proceed. What I have stated is that the ideas and ideals of Equality, Fraternity and Liberty are rooted in the Islamic ideals and it is the Islamic Law which showed other countries and states to enact such laws as Women's Right to Property Act, the Divorce Act etc., in England and elsewhere. Even though the Christian countries throughout the world do not allow divorce, laws are passed in America and other places permitting divorce on the lines of the Islamic law. Coming down to British India, Widow Remarriage Act, the Indian Divorce Act, Hindu Women's right to Property Act, the Caste Disabilities Removal Act etc. are all prompted by the Islamic Law. Therefore, my submission is that almost all the progressive laws and enactments which have been recently made are based on the Islamic Law. I may add that the ideas underlying the famous Temple Entry Proclamation are not foreign to the teaching of Islam.

Mr. Kottur Kunjukrishna Pillai: Sir, I rise to a point of order. The Proclamation has unequivocally said in its preamble that it is as a result of the inherent virtue of Hinduism, *viz.*, its adaptability, that His Gracious Highness had to make such a Proclamation. And here my friend is trying to put up a controversy by saying that in the promulgation of such a Proclamation something was borrowed from Islam, to which we strongly take exception and equally strongly repudiate the statement. Sir, I may also point out that it is entirely out of order for the honourable member to question the validity or authority or the origin of the great Proclamation when it is clearly stated in the Proclamation that its original source is from Hinduism. It is not Mr. Ismail alone who is responsive to religious susceptibilities. We also are susceptible to our religion. And I enter my strongest protest against his statement.

Sahib Bahadur T. Mahomed Ismail: I do not think, Sir, that my remarks could give rise to such protests. I do not question the authority or origin of the great Proclamation. I only say that inequalities existed among the Hindus till the Proclamation. But, Sir, throughout the 1300 years we are observing that principle of equality and brotherhood and I am gratified to say that this principle of equality and brotherhood has been accepted and followed by the Hindu community. And we are one with our brothers in feeling gratified of this Proclamation.

Mr. Kottur Kunjukrishna Pillai: May I ask, Sir, whether the honourable member is in possesion of facts to say that the origin of the Proclamation was the principles contained in the Islamic religion?

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Sahib Bahadur T. Mahomed Ismail: I do not say that original Hinduism did not possess these ideas. But they were not followed. My honourable friend could see that I mentioned this only to show the soundness and practicability of the principles of Islam and that we should think twice before we intend to make any departure from its tenets when we frame new laws such as the Special Marriage Act.

Sir, one point more I have to say before I finish my remarks. It was said more than once in this House that this piece of legislation promotes inter-communal harmony. That was the slogan I heard elsewhere also. But I fear that the result of passing this law would be the reverse of it. I ask in all seriousness whether one who believes in his religion would like to forego the principles of that religion. In this connection I may also remind what Mahatma Gandhi, that apostle of Hindu-Muslim unity, decided when the question of marriage of the sister of Pandit Nehru, that lion of Indian nationalism with Mr. Said Husein, was referred to the Mahatma. She was willing to marry Mr. Said Husein even by accepting Islam but Mr. Said Husein was not willing to change his religion. Mahatma Gandhi did not permit the marriage and Mr. Said Husein had to leave India and he is now living in America. The reason for this is, Sir, that we love our religion more than our lives, wealth, or women.

Then, Sir, an example was quoted in favour of this Bill. That is, the Great Mogul, Akbar the Great, contracted inter-communal marriages. I can only answer that by saying that before God there is no superiority or inferiority among the Muslims whether one be Akbar the Great, or His Exalted Highness the Nizam or a poor Ismail as myself or a beggar in the street. Before God all are equals. More over Akbar has done it to ensure the political soildarity of his State. He could have passed such a law stating that inter-communal marriages could be done. But he has not attempted to do it. Then, Sir, it was also stated, that Mr. Jinnah, the leader of the Indian Muslims married a Parsi lady. I request the House to believe me, when I say, that she, the wife of Mr. Jinnah embraced Islam after she was married and she died a Muslim. She was buried in a Mosque at Bombay and this Mahomed Ismail was present at the burial function.

Mr. Kochikal P. Balakrishnan Tampi: Was there any controversy regarding this?

Sahib Bahadur T. Mahomed Ismail: I do not remember that there was any controversy.

Mr. Kottur Kunjukrishna Pillai: Is it not after the marriage that conversion took place?

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Sahib Bahadur T. Mahomed Ismail: Yes. A Muslim can marry a Hindu or Parsi woman but the marriage becomes legal and binding only on her accepting Islam

Sir, I have got one request to make to this honourable House. The elected members of this House got themselves elected to this Legislature by the votes of the Muslims also. And in the name of Muslim voters I appeal to them to exercise their votes against this Bill.

Mr. Kottur Kunjukrishna Pillai: Does the honourable member know that there are a good number of Muslims who want a legislation of this kind saying that it will not be against their faith?

Sahib Bahadur T. Mahomed Ismail: Sir, it is news to me. I have got about 200 resolutions passed by various Muslim assocrations in Travancore copies of which have been given to the Government, to the Legal Remembrancer and to the Secretary to the Sri Chitra State Conncil, protesting against the passing of this Act, when it was known that it was passed by the Assembly. Sir, I can assure the honourable House that there is not a single Muslim who wants a Bill of this nature. I would be thankul to any honourable member of this House who could show any resolution passed by any Muslim association saying that the Muslim community is in favour of this Bill.

Mr. Kottur Kunjukrishna Pillai: If I mention a name he will calumny him by saying that he is not a Muslim.

Sahib Bahadur T. Mahomed Ismail: You cannot mention one single name.

Mr. Thomas Chandy Mukkadan: മുസ്ലീം സമുദായത്തിലുള്ള ഭൂരിഭാഗം ഈ നിയമം വരാൻപോകുന്നു എന്നും, ഇന്നപ്രകാരമാണെന്നും അറിഞ്ഞിരിക്കയില്ലെന്നും വരുത്തോ?

Sahib Bahadur T. Mahomed Ismail: This Bill was introduced some 6 years before in the Assembly. It was published in the Gazette then. But the ordinary people do not read the Gazette. Last time when it was brought before the Assembly and referred to a Select Committee not a single Muslim was in the Committee.

Mr. Kochikal P. Balakrishnan Tampi: Sir, on a point of order. Is the member entitled to refer to unpublished proceedings of the other House?

Chairman: He is not in order if it is unpublished. I want to know whether it is published.

Mr. Puthupally S. Krishna Pillai: It has not been published, Sir.

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Sahib Bahadur T. Mahomed Ismail: I am speaking about what occurred last time, when the Bill was postponed for the third reading. Those proceedings were published. Then, Sir, resolutions were passed at various meetings and associations of the Muslim community, which were sent to the Government, the Legal Remembrancer and to myself. Therefore, I make this final request to the honourable members of this House to exercise one vote in favour of the Muslims, at least as a matter of gratitude. Sir, before we, the Muslims, pray, on banded knees, to the ultimate source of the laws of Travancore—His Gracious Highness the Maharaja—to exempt us from the operation of this Bill, I request the honourable members of His Highness' Government who are on the floor of this House to vote for us and save us from the tyranny of majority rule.

Mr. Puthupally S. Krishna Pillai: I wish to put one or two questions so that I may be enabled to explain the principles of the Bill more fully when the debate is closed. May I know whether under the Islamic law it is proper for a Muslim to procreate children in a woman not married by him?

Sahib Bahadur T. Mahomed Ismail: It is not proper.

Mr. Puthupally S. Krishna Pillai: Then, am I too understand that such unions are prohibited by the Koran?

Sahib Bahadur T. Mahomd Ismail: Yes. It is only concubinage.

[At this stage Mr. M. Govindan vacated the chair which was then occupied by Mr. K. K. Kuruvilla, one of the panel of Chairmen.]

Mr. M. K. Ananthasiva Aiyar: Is it the principle of Islam that if a man violates Islam he ceases to be a member of the Muslim community?

Sahib Bahadur T. Mahomed Ismail: He does not cease to be a Muslim but he meets the punishment, that will be given to him by God.

Mr. M. K. Ananthasiva Aiyar: Is it not the ruling of Islamic law that if a Muslim man marries a non-Muslim woman he ceases to be a Muslim?

Sahib Bahadur T. Mahomed Ismail: No. If a Mussalman marries a non Muslim other than a Christian or a Jew, the marriage is not legal but he remains a Muslim. If a Muslim woman marries a non-Muslim she ceases to be a Muslim.

Mr. M. K. Ananthasiva Aiyar: Supposing he is not able to convert the woman to the Islamic faith, what is the result?

Sahib Bahadur T. Mahomed Ismail: The man remains a Muslim, but the marriage is void and illegal. It is only concubinage with its consequences

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Mr. M. Govindan: Sir, to the question put by the Legal Remembrancer, Mr. Ismail answered that concubinage is prohibited under Muhammedan law.

Sahib Bahadur T. Mahomed Ismail: There is no question of prohibition or not. If a Muslim marries a non-Muslim not allowed by law, then it is concubinage and it is not marriage.

Mr. M. Govindan: That is exactly what I say. I use the word 'prohibited' and my friend prefers the word 'not allowed'. Anyway, if a Muslim keeps as wife without marrying a non-Muslim it is prohibited and the children born out of that union do not get any inheritance. That is the idea. What we propose here is that such relationship may be legalised so that the children may get some inheritance. To that extent we go. In the case of the Child Marriage Restraint Bill also, the question was raised whether it was not going against the principles of Islam. Some gentlemen thought it was. But, as it was considered from the point of public policy that it was necessary to enact that piece of legislation, it appealed to the common sense of the House to pass it. The fact cannot be denied that as in the case of other communities, so in the case of Muslims also, there may be temptations which lead to concubinage. Sir, it is competent to this House and it is the duty of this House to allow the parties if they so desire to validate that relationship so that the children may not become bastards all their lives. It is a great sin and if only that Prophet Mohammed were here, he would have been the first to rise and object to the amendments of Mr. Mahomed Ismail (*cries of no, no*).

Sahib Bahadur Abdul Tayeb Shaikh Khaderbhoy: Sir, I wish to speak a few words.

Mr. M. Govindan: I do not yield. When on a paramount consideration Sati was going to be abolished, there was a cry that it was against the Hindu religion, but this State recognised its duty to see that a timely reform was introduced. The position here is similar to that. Now there are ever so many people keeping concubines. The fact cannot be denied. Concubinage is prevalent simply because human life is not limited by these artificial sections that we have made. Man is man and woman is woman and a man may love only woman. Why should that divine feeling be restrained by our artificial rules? We should not do that. Otherwise if it was ordained by God that a man should not marry from another community or section, how is it that when many of our educated men who go to Europe and come back with European wives they are not allowed to contract a valid marriage? Should we not make provision, Sir, for the proper marriage? We find gentlemen occupying responsible position here who have married from

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[Mr. M. Govindan.]

out of their caste. Properly speaking, if there was any civil marriage contract registered elsewhere, where better laws prevail, it would be concubinage. I know a friend of mine—a wealthy friend —who has married from a different community and has settled down in Ceylon and has got nine children, lovely and handsome ones. I cannot think of that.

Mr. G. Narayana Aiyar: May I know whether there is not provision for maintenance in the Criminal Procedure Code?

Mr. M. Govindan: Not exactly concubinage. It may be that is our Criminal Law. It is not a question of mere maintenance. Why should these children born of this father not inherit the properties is what I ask. Why should we stand in the way? It is not a civil marriage law between members of the same community that we are enacting. We are introducing only a law to validate marriages which are not allowed and which are not illegal according to the present law. It so happens that, even in this advanced State of Travancore, we have got several communal pieces of legislation and I wish for the day when we should make one piece of legislation for the whole of Travancore. I would welcome such a day and it is only then that our progress can be achieved. Now we speak of consolidation of communities and we speak of all sections merging into one. Is it possible that we are having only a small discussion for the merger of these communities? I for one would consider it must be unwholesome and unholy for anybody to attempt to postpone this piece of legislation, to talk it out and quote the blue books. We know the old tricks and devices of talking out of pieces of legislation. That certainly is not what a straightforward member of this House ought to do? I appeal to the common sense of this House, notwithstanding whether we progress or retared the movement of the community for consolidation into one patriotic individual to support this piece of legislation. We should remove communal pieces of legislation that disfigure our blue book. I suppose this is the start. That is all that I appeal to the members of this House.

Sahib Bahadur Abdul Tayeb Shaikh Khaderbhoy: Sir, I rise to support the amendment moved by Mr. T. Mahomed Ismail. Sir, he has said all the things and I do not think that there is anything for me to explain in regard to that matter. But I have to state that the Muslims are in a minority and if they are not given support by the other members, we are helpless. So we will have no other go but to go and plead before His Highness that we should be exempted from this Bill. When the Child Marriage Bill came up before this House, we were asked by some Brahmin members to support it. We requested them that some want the Bill

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and some of them do not want it hence, we Muslims will remain neutral. So that, when we found that there was no unity among them, we remained neutral. Now, in this case, all of us, Muslims are united and we appeal to all the other members of this House to give their support to the amendment. I ask the members of this House, when we are united, why there is difficulty in supporting us, Muslims.

Mr. Kainikkara Padmanabha Pillai in the other House has stated that if we Muslims are all united he would support Muslims. Hence I appeal to all the members of this House to support us.

Sahib Bahadur Haji Hassan Yacoob Sait (*Commerce and Industry, North*): സർ, ഈ ബിൽ മുസ്ലീം സമുദായത്തെ ബാധിക്കാതെ മുസ്ലീംസമുദായത്തെ ഇതിന്റെ പരിധിയിൽ നിന്നു ഒഴിവാക്കേണ്ടതാണു്. മുസ്ലീങ്ങൾ കുറാനേയും വിശുദ്ധനിബന്ധയുടെയും ഉപദേശങ്ങൾ അനുസരിച്ചു് മതാനുഷ്ഠാനകർമ്മങ്ങൾ നടത്തേണ്ടതും മിശ്രവിവാഹം എന്നതു അദ്ദേഹത്തിന്റെ ഉപദേശസംഹിതയിലും കുറാനിലും ഉൾപ്പെട്ടിട്ടില്ലാത്തതും ആകുന്നു. അങ്ങനെയിരിക്കെ യഥാർത്ഥമുസ്ലിമിനു് ഇപ്രകാരമുള്ള മിശ്രവിവാഹവ്യവസ്ഥകൾ അനുകരണീയമല്ല. എന്റെ അറിവിൽ ഭൂരിപക്ഷം മുസ്ലിമിങ്ങളും ഈ ബിൽ മഹമ്മദ് മതത്തെ ബാധിക്കരുതെന്നു കാംക്ഷിക്കുന്നവരും അപ്രകാരമുള്ള അവരുടെ അഭിവാഞ്ഛയുടെ ഫലമായി അവരുടെ പ്രതിഷേധം ഗവണ്മെൻറിനെ ധരിപ്പിച്ചിട്ടുള്ളതും ആകുന്നു. ആകയാൽ ഈ ബില്ലിന്റെ പരിധിയിൽനിന്നും മുസ്ലിംസമുദായത്തെ ഒഴിവാക്കണമെന്നാണു് എന്റെ വിനീതമായ അഭിപ്രായം.

Sahib Bahadur M. Sultan Muhiadheen (*Trivandrum and Nedummgad* cum *Chirayinkil*): സർ, മി. മഹമ്മദ് ഇസ്മയിൽ അവതരിപ്പിച്ച ഭേദഗതിയെ ഞാൻ അനുകൂലിക്കുന്നു. ഒരു സമുദായത്തെ ഒരു ചട്ടത്തിൽനിന്നു ഒഴിവാക്കണമെന്നപേക്ഷിച്ചാൽ അതിനു് ഇത്രത്തോളം എതിരുകൾ വരുന്നതിന്റെ ആവശ്യം എന്താണെന്നു എനിക്കു മനസ്സിലാകുന്നില്ല. ഈ ഭേദഗതിയെപ്പറ്റി മി. മഹമ്മദ് ഇസ്മയിൽ കുലങ്കഷമായി വിവരിച്ചു സംസാരിച്ചു കഴിഞ്ഞിരിക്കുന്നു എങ്കിലും ഒന്നോ രണ്ടു സംഗതികളെക്കുറിച്ചുകൂടി ഞാനും പറയണമെന്നു ആഗ്രഹിക്കുന്നു. ഒരു സ്നേഹിതൻ, ഈ ബില്ലിനനുകൂലമായിട്ടു ചില മുസ്ലിംകൾ നിശ്ചയങ്ങൾ പാസാക്കിയതായി പറയുകയുണ്ടായി. ആ സംഗതിയെപ്പറ്റി ഞാനും ഒരു പത്രത്തിൽ വായിച്ചു. നെയ്യാറ്റിൻകരയാണു് ഈ സംഭവം

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[Sahib Bahadur M. Sultan Muhiadheen.]

നടന്നതെന്നു പറയുന്നു. അവിടെ സാധുക്കളായ ഒന്നോ രണ്ടോ മുസ്‌ലിങ്ങളേയുള്ളൂ. അവിടത്തെ സ്വാധീനശക്തിയുള്ള ചില ഈഴവസ്നേഹിതന്മാരുടെ പ്രേരണയോടുകൂടിയാണ് ഇങ്ങനെ സംഭവിച്ചതെന്നും അന്വേഷണത്തിൽ അറിയുന്നു. വാസ്തവസ്ഥിതി അന്വേഷിച്ചുനോക്കിയതിൽ അങ്ങനെ ഒരു മീറ്റിംഗ് തന്നെ നടന്നിട്ടില്ലെന്നും അങ്ങനെ ഒരു മീറ്റിംഗ് നടത്തത്തക്കതായ മുസ്ലിംങ്ങളും ആ പ്രദേശത്തിലില്ലെന്നും ആണ് മനസ്സിലാകുന്നതു്.

Mr. Kottur Kunjukrishna Pillai : അസംബ്ളിയിൽ നാലു മുസ്‌ലിം മെമ്പറന്മാരുള്ളതിൽ ഒരാളൊഴിച്ചു ബാക്കി മൂന്നുപേരും ഈ സംഗതിയിൽ നിഷ്പക്ഷമായാണ് ഇരുന്നതെന്നു മെംബറിനറിയാമോ?

Sahib Bahadur M. Sultan Muhiadheen : മി. പി. എസ്സ്. ഒഴിച്ചു് ബാക്കിയുള്ള മെംബറന്മാരിൽ ഒരാളായ മി. ചന്താമിയാസാഹിബിനു് വയസ്സാധിക്യംകൊണ്ടും മി. അബ്ദുൽകാദർ സാഹിബിനു ചെവിക്കു മന്ദതകൊണ്ടും ഇതിനെസ്സംബന്ധിച്ചു് പ്രതിഷേധം പുറപ്പെടുവിക്കാൻ നിവൃത്തിയില്ലാതെയായി എന്നുമാത്രമല്ലാ മൗനമായിരുന്നതുകൊണ്ടുതന്നെ അവർ മി. പി. എസ്. മഹമ്മതിന്റെ ഭേദഗതിയെ അനുകൂലിച്ചു എന്നുവേണം വിചാരിക്കുവാൻ.

Sahib Bahadur T. Mahomed Ismail : ഈ മുന്നു മെമ്പറന്മാരും ആ ഭേദഗതിക്കെതിരായിട്ടു് ഒരക്ഷരംപോലും സംസാരിച്ചിട്ടില്ലെന്നു മെംബറിനറിയാമോ?

Chairman : ആളുകളെപ്പറ്റി വ്യക്തിപരമായ അഭിപ്രായങ്ങൾ പറയേണ്ട ആവശ്യമില്ല.

Sahib Bahadur T. Mahomed Ismail : ആ മുന്നു മെമ്പറന്മാരും മൌനമായിരുന്നു് മി. പി. എസ്സിന്റെ ഭേദഗതിയെ അനുകൂലിക്കുകയല്ലേ ചെയ്തതു്?

Sahib Bahadur M. Sultan Muhiadheen : അതേ. മൗനം സമ്മതം എന്നാണു്. ഇവർ മൌനമായിരുന്നതുകൊണ്ടു് ഇവർ ഭേദഗതിയെ അനുകൂലിച്ചു എന്നുവേണം വിചാരിക്കുവാൻ.

Mr. T. K. Kittan: അസംബ്ളിയിലുള്ള ഒരു മെമ്പർ വയസനാണെന്നും ഒരാൾക്കു ചെവികേൾക്കാൻ പാടില്ല എന്നും പറയുന്നതു കേട്ടു, എന്നാൽ... ... ...

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Chairman : വ്യക്തിപരമായ അഭിപ്രായങ്ങൾ പറയുവാൻ പാടില്ല എന്നു ഞാൻ പറഞ്ഞുകഴിഞ്ഞു.

Sahib Bahadur M. Sultan Muhiadheen : തിരുവിതാംകൂറിലെ മുസ്ലിങ്ങൾക്ക് ഈ ബില്ലിനെപ്പറ്റിയുള്ള അഭിപ്രായമെന്താണെന്നു നോക്കുന്നപക്ഷം ഈ രാജ്യത്തിന്റെ നാനാഭാഗങ്ങളിലും പത്തു മുന്നൂറിൽപരം വലിയ യോഗങ്ങൾ കൂടി ഈ ബില്ലിനെ പ്രതിഷേധിച്ചു നിശ്ചയങ്ങൾ പാസാക്കുകയും ആ നിശ്ചയങ്ങൾ ഗവണ്മെന്റിലേക്കും ചില മെമ്പറന്മാർക്കും അയച്ചുകൊടുക്കുകയും ചെയ്തിട്ടുള്ളതായി എനിക്കു നേരിട്ടു അറിവുള്ളതാണ്. അതുകൊണ്ട് മുസ്ലിംകൾ ഈ ബില്ലിനെ ഏതുതരത്തിൽ വീക്ഷിക്കുന്നു എന്നു അറിയാൻ കഴിയും. സർ, മുസ്ലിംകളുടെ മതതത്ത്വങ്ങളും ചട്ടങ്ങളും അവരുടെ മതഗ്രന്ഥമായ കുറാൻ വാക്യങ്ങളേയും നിബിവചനങ്ങളേയും ആശ്രയിച്ചാണ് രൂപവൽകരിച്ചിരിക്കുന്നതു്. ഈ ബില്ലിന്റെ തത്ത്വങ്ങൾ മുസ്ലിംകളുടെ വിശുദ്ധകുറാനിലേയും നിബിവചനങ്ങളിലേയും തത്ത്വങ്ങൾക്ക് വിരുദ്ധമാണെന്നു് മി. മഹമ്മദ് ഇസ്മയിൽതന്നെ വിശദമായി പറഞ്ഞുകഴിഞ്ഞിരിക്കുന്നു. ഇനി എനിക്കു ഇവിടത്തെ മെംബറന്മാരോടു ഒരഭ്യർത്ഥന പുറപ്പെടുവിക്കാനുണ്ട്. ഇവിടത്തെ മെംബറന്മാരെല്ലാവരും മുസ്ലീംസമുദായത്തിന്റേയും വോട്ടോടുകൂടി ജയിച്ചുവന്നവരാണ്. മുസ്ലീംകൾക്കാവശ്യമില്ലാത്ത ഒരു ചട്ടം അവരുടെ തലയിൽ വച്ചുകെട്ടുന്നതിനായി നിർബന്ധിക്കുന്നതു് ശരിയല്ലാത്തതാണ്. മുസ്ലീംകളുടെ അഭിപ്രായത്തെ പരിഗണിച്ചു ഈ ബില്ലിൽനിന്നും അവരെ ഒഴിവാക്കണമെന്നുള്ള അപേക്ഷയോടുകൂടി ഞാൻ ഈ ഭേദഗതിയെ അനുകൂലിക്കുന്നു.

Mr. James Fletcher : Sir, this is a piece of social legislation, and when it goes against the very principle of any religion, surely this House should not support it. The fact that it does so has been very carefully and elaborately pointed out by my honourable friend Mr. Mahomed Ismail. This Bill goes against the very essence of the tenets of Muslim religion according to Mr. Mahomed Ismail. Therefore, I request my honourable friends here to see first whether the Bill goes against the religion which the Muslims profess and then decide the matter. That should be the liberal and generous trend of opinion which should exist in this House. My honourable friend Mr. Govindan would say that for the sake of high principles, religion must go.

Mr. M. Govindan : I did not say so.

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Mr. James Fletcher : Of course, we differ in our opinion. Mr. Govindan may say that religion must not be given precedence to that extent. This is not good for our purpose. In a piece of social legislation such as this, my submission is that religion has to be respected. If religion prohibits a particular action, that should be obeyed. The Legislature should not go diametrically opposite to the principles of religion. My honourable friend Mr. Govindan himself would admit that as long as religion is the most important thing it should be respected. That should be the foremost idea of any human being. Therefore, I am sure, all my friends on this side of the House would say that this piece of legislation gives no precedence to the principles of religion. We are convinced from the arguments of the honourable friend Mr. Mahomed Ismail that marriage of a Muslim with a non-Muslim woman is not permitted by the Koran, nor even contemplated by it at all. Especially in India, if a Muslim man were to marry a Hindu woman, surely it will be prohibited by the Koran. In such circumstances I ask how this Legislature can effect a valid marriage between a Muslim man and a Hindu woman.

Mr. Puthupalli S. Krishna Pillai : Did not the honourable member hear Mr. Mahomed Ismail saying that a Muslim cannot enter into a marital relationship with an idolatress ?

Sahib Bahadur T. Mahomed Ismail : I wish to explain the position. I said that such a marriage is irregular. It will become valid only when the woman becomes a convert to the Muslim religion.

Mr. Puthupalli S. Krishna Pillai : May I know whether the Muslim religion contains any prohibition for effecting a marriage between a true Muslim man with a non-Muslim woman or whether that is allowed even though the Muslim law declares that relationship to be void and that her issues will be excluded altogether from the estate of the alleged father ?

Sahib Bahadur T. Mahomed Ismail : Untill the woman becomes a convert, marriage so contracted is irregular. That is what religion says. The children are therefore illegitimate.

Mr. Puthupalli S. Krishna Pillai : Am I to take it then that the Muslim law prohibits a true Muslim from entering into marital relationship with a non-Muslim woman ?

Sahib Bahadur T. Mahomed Ismail : Certainly.

Mr. James Fletcher : In any event, the Muslim religion does not allow or permit marital relationship between a Muslim man and a Hindu woman.

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Mr. Puthupalli S. Krishna Pillai : Is it not true that a Muslim man can enter into conjugal relationship with a non Muslim woman and beget children and may I know whether in the member's opinion, such a practice prevails in spite of the injunctions of the Koran? May I know whether such a practice is inconsistent with a true Muslim's conduct?

Mr. James Fletcher : The Hindu religion, being elastic, may agree to certain principles.

Mr. Puthupalli S. Krishna Pillai : I want an answer about the Muslim religion. I want to know whether an individual Mahomedan—not as a community or race—can so marry and thereby cease to become a member of the Muslim faith?

Mr. James Fletcher : An individual Muslim may commit some mistakes, crimes or do something which is prohibited by religion. That will not raise a general point.

Mr. Puthupalli S. Krishna Pillai : Mr. Mahomed Ismail read an extract in that connection. When such an invalid marriage is effected, may I know whether that individual true Muslim goes to heaven and the other to hell?

Sahib Bahadur T. Mahomed Ismail : I shall explain that point once again.

Mr. Kottur Kunjukrishna Pillai : That cannot be allowed, Sir.

Mr. Puthupalli S. Krishna Pillai : When I put a question to Mr. Fletcher in reference to certain statements made by the honourable member Mr. Mahomed Ismail and when there is any mistake in that, it is open to Mr. Mahomed Ismail to offer a word by way of personal explanation. In that manner Mr. Mahomed Ismail can answer my point.

Mr. Kottur Kunjukrishna Pillai : Under the Standing Orders only one member can be in possession of the House and he is Mr. Fletcher now. Therefore he alone is entitled to answer it.

Mr. Puthupalli S. Krishna Pillai : That is a matter of law. But if one member finds that his speech has been misinterpreted, it is open to the member who made the speech to correct that impression, even if that happens in the middle of a member's speech. That is only exercising a member's privilege. In that way, Mr. Mahomed Ismail can explain the position by offering personal explanation.

Mr. James Fletcher : Individual Muslims might have committed or may commit certain acts which are prohibited by the Koran.

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Mr. M. Govindan: May I know from the member whether we are enacting a law for individuals?

Mr. James Fletcher: Unfortunately, this law wants to condone certain acts committed by individuals. Certain crimes committed by individuals are sought to be made legal.

Mr. P. I. Simon: Will this law enable a Muslim to go to heaven?

Mr. James Fletcher: That is a different question altogether.

Mr. M. K. Anantasiva Aiyar: Am I to take it that the Penal Code adopted by the Legislature also contains the same provisions of the Koran, in respect of prohibition of marriage?

Mr James Fletcher: I would make a distinction. Penal Code is not a social law. But it is more or less in conjunction with the principles contained in the Koran. However, we are now concerned with a social piece of legislation.

Mr. P. I. Simon: Suppose a man commits theft, does not the Koran say that his finger should be cut?

Mr. James Fletcher: I have not looked into the portions of the Koran which deal with various crimes mentioned in the Penal Code.

Mr. Kottur Kunjukrishna Pillai: Has not the honourable member taken Criminal Law for his M. L. degree? In that connection, has not the honourable member studied the criminal laws of various other religions?

Mr. James Fletcher: My honourable friend is correct. But I have not made a comparative study of the Mahomedan Law. What I have studied is the law as it is existing among the highly civilized European and American Countries.

Mr. Kottur Kunjukrishna Pillai: May I know whether the honourable member is suggesting that the Muslim law is not civilised?

Mr. James Fletcher: I am not at all suggesting that. You have to expect only a primitive code in the earliest times.

Mr. M. K. Anantasiva Aiyar: May I know whether the Brahmins have not got a law for their marriages? Is not the Child Marriages Restraint Act which the honourable member suggested against their law?

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Mr. James Fletcher: I entirly agree with my friend Mr. Ananthasiva Aiyar that the Hindu Law has got certain provisions with reference to marriage and that provisions have to be interpreted according to the various customs. To begin with they had the law as laid down by Manu. Then there were commentators. These Laws have been interpreted by Courts with the aid of learned pandits. So the Hindu Law as at present followed is not what was laid down in ancient times. If any particular community does not want a social law it is reasonable and appropriate that that community should be excluded from that law.

Mr. M. K. Anantasiva Aiyar: When the Brahmin community wanted to be exempted from the Child Marriage Restraint Act what was the member's opinion?

Mr. James Fletcher: That Act has reference to all Indians not Brahmins alone. It not only affects the Hindus, it affects the Christians and Muslims as well. If the Brahmin community as a whole wanted to be excluded they would have been excluded and ought to have been excluded. That is only a reasonable request. But on the other hand what I understand is that there were members of the same community who did not want to be excluded.

Mr. P. I. Simon: When was the Christian Law regarding marriages passed? Was it at the time of Moses or at the time of Christ?

Mr. James Fletcher: So far as the Christian Law is concerned, the Christians are the followers of Christ who was himself a Jew by origin. The law prevailing then was the Mosaic Law or the Law of the Jews.

Mr. P. I. Simon: Did the Jews marry from other communities?

Mr. James Fletcher: They are very conservative, they marry only in their own community in order to keep up the purity of the race. The Christian Marriage Law was enacted long after the time of Christ.

Now we are at the question of how far the Muslims should be exempted from the present legislation.

Mr. P. I. Simon: Is the Islamic law of marriage or the Christian Law of marriage more civilized?

Mr. James Fletcher: I am not in a position to compare the two. If my friend is anxious, I shall explain it in this way. Before the birth of Christ there was Judaism. When Christianity came into being, the people were following the law of the Jews.

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[Mr. James Fletcher]

After Christ there was development of that law in two directions. In one direction it developed into the Christian Law and in another into the Mahomedan Law. Mahommed called himself the last prophet. A large number of people believed it. That is what we find when we study the religions of the world.

According to the British Indian Special Marriage Act the preamble excludes those who profess the Christian, the Mahommedan and Parsee religions. The law includes those who are Hindus, Buddhists, and Jains. I have no objection to apply here also the principles adopted in British India.

Mr. Kottur Kunjukrishna Pillai: May I know whether the member is aware of the Civil Marriage Act in Cochin?

Mr. James Fletcher: I am not aware of that. Let us follow British India rather than Cochin.

My friend Mr. Govindan might say that this piece of legislation is likely to bring about a great consolidation among the people. The result will be quite the reverse. Suppose a Muslim knowing that there is a bill of this sort tries to marry a Hindu woman from a respectable family. This will cause great animosity and religious feud. A particular Muslim might be willing to marry a respectable Hindu lady with the best of intentions. The result will be that the Hindu family will be looked down upon by other Hindus. Similarly, the Mahommedans will expel the Muslim young man. So these two persons will be without any religion or relationship. Of course, the children born of such a marriage are permitted to succeed to the property of the parents. But what will be the feeling regarding those children by the two communities? The Hindus will think that the woman has brought great disgrace to that community and the Muslims will also be against the children. The children will be helpless. On the other hand, if there is no law, such people will think twice or thrice before contracting a marriage of this type.

Mr. Puthupalli S. Krishna Pillai: Suppose on the fourth occasion they contract such a union, will their relationship be better if there is no law?

Mr. James Fletcher: The actual result according to the proposed legislation is that they will be very unhappy under the present conditions. It is better not to have such a law. Because the social relationship between the different communities will get strained, this law is undesirable. Why should we deceive them by giving them a law like this? Therefore it is not desirable that the Muslims should be included in the list of persons governed by this

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law, I can understand a lady belonging to a particular sect of the Hindu community marrying a young man from a different sect of the same community, because they practise the same religion and have got many things in common. I do not object to a high caste Hindu marrying a low caste Hindu.

Mr. Puthupalli S. Krishna Pillai: Will the honourable member object to a Hindu marrying a Christian?

Mr. James Fletcher: There are such marriages. There are cases of a Hindu husband converting himself as a Christian and then marrying a Christian lady. There are also cases in which a Christian lady becomes a Hindu and then marries a Hindu young man.

Mr. P. I. Simon: Are there not cases of Nadar Christians marrying Nadar Hindus?

Mr. James Fletcher: Yes. Though they profess two religions, their social habits and the mode of their life are the same. Difficulties are great when the husband and the wife belong to two different communities.

Mr. Puthupalli S. Krishna Pillai: May I know whether the member has any objection in a Mahommedan becoming an apostate and then marrying?

Mr. James Fletcher: We are not legislating for that.

Mr. Puthupalli S. Krishna Pillai: I am putting that question to know the member's idea on that matter so that I may oppose or support amendments brought forward to that effect.

Mr. James Fletcher: I have no objection. A Muslim may marry a Hindu lady if she is prepared to become Mahomedan. She will be admitted into the Muslim community.

Mr. Puthupalli S. Krishna Pillai: What about the contrary?

Mr. James Fletcher: It seldom happens.

Mr. Puthupalli S. Krishna Pillai: We are not legislating only for the daily occurrences. Suppose a Mohammedan lady is converted to some other religion and marries a non-Mahommedan, would the member have any objection to such a marriage?

Mr. James Fletcher: I shall have no objection to such a marriage. At least there will be one solace that both people follow one religion. It generally happens that either the husband or the wife changes religion and joins the religion of the other whether it be from Mahommedanism to Hinduism or from Hinduism to Mahommedanism. After the marriage, they both belong to the same religion and the people of that community would accept them. They can live happily. But according to this Bill, the husband

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[Mr. James Fletcher]

may be a Muslim and the wife a Hindu and after the marriage they are not needed in either community. Under the present circumstances if the Hindu marries a Muslim lady that lady will not be admitted into the house of any respectable Hindu family.

Mr. M. K. Anantasiva Aiyar: Is it not because of the absence of a Bill like this that they are not allowed admission to respectable families ?

Mr. James Fletcher: I thank the member for that suggestion. We may make laws for adjusting social conditions. But what we should do is to legislate for the present social conditions. If the social conditions change and a law is necessary to adjust the society to those conditions, then we shall make such a law. But to make the law and ask the people to change social conditions accordingly is undesirable. We should not rush into such a legislation simply because such things may happen in future.

Mr. M. K. Anantasiva Aiyar: Is it not better to discourage adultery.

Mr. James Fletcher: Certainly. I very muth desire it.

Mr. M. K. Anantasiva Aiyar: Will not a legislation of this kind prevent adultery ?

Mr. James Fletcher: That is a matter of opinion. I shall explain how it will be worked out. The very fact that there is no law to protect the parties will make them careful because their unjustifiable acts and the results arising from them will not be legalised. They will know it will be a black spot on their lives and that the society will not accept them. But, on the other hand, if there is a law like this, it will be an impetus for people to fall into the snare and commit unwanted things.

Mr. Puthupalli S. Krishna Pillai: When once the marriage is legalised, will co-habitation become a sin ?

Mr. James Fletcher: The question of sin depends upon the definition of the word. If one does certain things prevented by religion then it may be called sin. If one does things against social etiquette, then that may also be called sin. The word 'sin' can have a very liberal or a very restricted meaning.

Mr. P. I. Simon: May I know the difference between 'crimes' and 'sin' ?

Mr. James Fletcher: 'Crime' is something committed against the recognised law of the State. If any person goes against the legal provisions, then it becomes a crime for which he is punished.

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Mr. T. Krishna Pillai : May I know what is 'sinful crime'?

Mr. James Fletcher : When one commits sin according to religion and crime according to State, then it is called sinful crime.

Mr. P. I. Simon : May I know the difference between crime and offence.

Mr. James Fletcher : I have no objection to answer my friend's question. The only thing is that we will be going far beyond our limits. We have to be very serious when we are enacting social legislation like this. We have to consider what will be the effect, how far the members of the community will be affected, how far it will be useful and how far it will be deleterious if such a legislation is passed. In considering the *pros* and *cons* we can come to the conclusion how this piece of legislation would be appropriate and suitable for our State. As I said, we have gone far beyond the provisions contained in the British Indian enactment. Now what are the provisions where there is fundamental difference between our legislation and the British Indian legislation? The British Indian Act does not contain provisions binding the Muslims or the Christians.

Mr. Puthupalli S. Krishna Pillai : The member has dealt with that point exhaustively and no member has a right to repeat what he has said.

Mr. T. Krishna Pillai : May I know —

Mr. Kochikal P. Balakrishnan Tampi : Does not the member realise that it is more dangerous to interrupt Mr. Fletcher than to catch a snake?

Mr. P. I. Simon : Sir, is it not casting aspertion on an honourable member of this House?

Mr. James Fletcher : May I know to whose statement the member refers to, is it to mine or to some body else?

So, as I have stated, instead of consolidation, the Bill brings about unnecessary disruption, and the result of this Bill, if it is passed, will be that there will be another set of people without any caste or society whatsoever. If this legislation is passed there will be numerous couple wanted neither by the community of the husband nor by the community of the wife and their children will belong to no community.

Mr. Kottur Kunjukrishna Pillai : Sir, this is the third time that this argument is being brought forward hy the member.

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Mr. Puthupalli S. Krishna Pillai: No member has a right to indulge in repetition.

Mr. James Fletcher : I am saying that instead of consolidation we will be bringing about a disruption as well as a new community which nobody will desire to have. According to the Census Report every community has got sufficient number of men and women within its fold. Each community can be content with marrying members from the same community.

Mr. M. K. Anantasiva Aiyar: Does not the member think that at times conversion could be effected by these beautiful figures ?

Mr. James Fletcher : If anybody wants to be converted on account of conviction, let him do so. But we do not desire conversion by bringing forward a piece of legislation like this. It is never the object of this legislation or the sponsors of it that conversion would be effected by it. Therefore that point need not be considered.

Marriages conducted under this Bill are not conducted by religious persons authorised to do so but an officer who is called the Registrar of Marriages.

Of course, it is entirely a contract which may be attested probably by the Registrar. Then, since it is a contract, naturally, chance is given for a free divorce Only a petition has to be filed. What is the advantage of having such marriages? Today, Sir, under the Bill, the parties who are of a certain age can contract a marriage. Tomorrow or the day after, one of the parties goes and puts in a petition and the marriage is dissolved. Such a Bill will bring ruin to the country. I personally believe that societies in India exist and flourish because marriages are more valid. There is probably —

Mr. Puthupalli S. Krishna Pillai: Is not this form of marriage known to Christians in British India ?

Mr. James Fletcher: So far as Christian marriages are concerned, I shall state to my friend—because I think, he may not be familiar with their customs—that according to the Christian tenets a marriage cannot be dissolved and ought not to be dissolved.

Mr. M. K. Anantasiva Aiyar: Is it applicable to the Protestant Christians ?

Mr. James Fletcher: To all, Sir.

I was coming to that. The tenets of the Bible say—what God has united let no man cut asunder.

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Mr. Puthupalli S. Krishna Pillai: Sir, I do not ask the honourable member whether marriage would be dissolved. All that I want to know is whether, under the Christian Law a marriage will be celebrated in the presence of the Registrar or by observing the ceremonies.

Mr. James Fletcher: No, Sir.

Regarding the easy method of dissolving marriages allowed by the Bill, I was referring to one fact, *viz.*, that it brings about ruin and trouble to the community. As my honourable friend the Legal Remembrancer referred to, it is not that Christian religion allows divorce. So far as India is concerned, I may assure my honourable friend that among the Catholics, divorce is prohibited and Catholics form almost the majority in numbers in India as well as in other parts of the world and the Catholic Churches never permit a divorce except in very serious cases. I may refer to the historical question of how Henry VIII tried to effect a divorce and the trouble that was brought about by the intervention of the Pope. So much so, the Catholic Church never permits divorce. Even among the Protestants—

Mr. M. K. Anantasiva Aiyar: I want to clear some doubt among Catholics. Suppose a Catholic wife is suffering from a very severe attack of leprosy and the man wants to marry another woman and he wants to divorce this woman. Is it possible under the existing law of the Catholic League that he can divorce that woman and marry another?

Mr. James Fletcher: Sir, it is not permissible. It is believed that the union between man and woman is something effected by God and hence could not be cut asunder by any human being.

Mr. P. I. Simon: May I inform my friend that a marriage union is effected only in the presence of the priest?

Mr. James Fletcher: It may be very logical. But my belief is that where questions regarding religious tenets come into play, we are not allowed to have our reasons; and our logic should not come into play in religious matters. We have to take the tenets as they are and believe them. We have to act according to them. We cannot question the tenets according to human standards. Religion says certain things. We have to take them as they are. We cannot go into the truth or falsity or the reasonableness of those tenets and we have to accept things as they stand, so much so, Sir, the Catholic Church does not permit divorce.

Mr. Puthupalli S. Krishna Pillai: I wish to know whether in supporting the motion made by Mr. Ismail, he is advocating monogamy, indissolubility of marriage and all that.

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Mr. James Fletcher: I have been only answering the questions that were directed to me.

Mr. Puthupalli S. Krishna Pillai: May I take it that these are not relevant to the matter?

Mr. James Fletcher: While I am questioned, am I to answer or not to answer?

Mr. Puthupalli S. Krishna Pillai: It is open to the honourable member to say that those questions are not relevant and that "I am not going to answer them."

Mr. James Fletcher: I will consider the questions that may be raised hereafter. Hence my statement with regard to these.

As my honourable friend Mr. Ismail said, though to some extent Muslim law permits divorce, yet it is not so very easy as the provision that is contained in this Bill. A mere petition is sufficient to bring about dissolution, and then what will be the result of such petition? Anyday, as some of the members here said, there may be some understanding between man and the woman and the result will be that a petition is simply filed and the marriage is at once dissolved. I submit that that sort of provision is most unsatisfactory.

Then Sir, with regard to the question of succession. There again, we find that this Bill is entirely against the provisions of the Muslim law. How can we legislate in this House something which is—

Mr. P. I. Simon: May I know whether the law of succession is different between the Shias and Sunnis?

(At this stage, the Dewan President resumed the Chair).

Mr. James Fletcher: I am supporting the amendment brought by—

Sahib Bahadur Abdul Tayeb Shaikh Kaderbhoy: I know there are the Sunnis and the Shias. So far as their succession is concerned, the principles are the same.

Mr. James Fletcher: There is very little difference. However, my friend asked the question whether there is any difference. I may refer my friend to the Cutchi-memons. They have got a slightly different method of succession. Of course, that creates only a slight difference. I may remind my friend about this fact that the Sunnis are considered to be orthodox Muslims while Shias are considered to be not so. Yet they are all Muslims.

Mr. Kottur Kunjukrishna Pillai: May I know whether he is aware that there are Mahomedans who follow the Marumakkathayam Law?

Mr. James Fletcher: There are. That law was not in accordance with the Koran; but it was a local law. They were following the law of the places where they were living. Even

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that law has been lately changed. I may suggest as answer to my friend that those Muslims who followed the Marumakkathayam Law were persons whose personal law was Marumakkathayam Law. After conversion, they kept the law and continued to be Marumakkathayees.

President: I do not follow.

Mr. James Fletcher: Muslims who followed the Marumakkathayam Law were having the law—which was their personal law before their conversion. Before they were converted to Islam, they were following the Marumakkathayam Law. After becoming Muslims, they continued their personal law. Even now, there is a Bill to set right that personal law to bring it in conformity with the Muslim law.

Mr. Kottur Kunjukrishna Pillai: May I take it that they were not considered to be Muslims when they followed the Marumakkathayam law?

Mr. James Fletcher: They were Muslims, but the custom continued among them. What I am speaking about is that the present Bill brings about a change regarding succession from the Orthodox Muslim law. Is it justifiable, is it desirable and is it allowable? These are the questions which I have to ask. That is perhaps one of the reasons why the Muslims in British India are exempted from the purview of the Special Marriage Act. Similarly also, I would suggest that because succession arrangements under this Bill go against the provisions of the Muslim law, we should exempt them here in Travancore also.

As a final appeal, I would say, Sir, that as the Muslims stand in the Council or in the other House, they are a minority indeed, with only a small number to represent them and they should not complain that the majority communities have imposed a law, which they do not want, especially when it affects official and religious aspects; non-Muslims can afford to be generous enough. Sir, let us remember that the Muslims as a body oppose this piece of legislation.

Mr. A. Easwara Pillai (*Kottarakara and Pathanapuram cum Shencotta*): What about the attitude of the Catholics?

Mr. James Fletcher: Catholics also strongly resist this piece of legislation. Now, I am at the amendment brought by my honourable friend Mr. Ismail and where the question of Catholics comes, I have got my amendment and I shall speak about that.

President: Order, order. The time is now over and the House will now adjourn *sine die*.

The House adjourned *sine die* at 4-30 p. m.

V. S. ARUMUKHAM PILLAI,
Secretary to the Sri Chitra State Council.

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